IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SAVIOR   :   CIVIL ACTION
                                 :
        v.   :
                                 :
SUPERINTENDENT OF HUNTINGDON   :
SCI, et al.   :   NO. 11-5639

ORDER

AND NOW, this 20th day of September, 2012, upon

consideration of Michael Savior's petition for writ of habeas

corpus pursuant to 28 U.S.C. § 2254 (docket entry # 3),

respondents' response thereto (docket entry # 7), United States

Magistrate Judge Jacob P. Hart's Report and Recommendation ("R&R")

(docket entry # 10), Savior's objections (docket entry # 14) and

supplemental objections to the R&R (docket entry # 15), and

respondents' response to Savior's supplemental objections (docket

entry # 17), and the Court finding that:

        (a) We will adopt and approve all of Judge Hart's R&R

with the exception of Part II.A[1];

_____

        [1] Part II.A of Judge Hart's R&R addresses procedural
default prior to the Supreme Court's recent decision in Martinez
v. Ryan, 132 S. Ct. 1309 (2012). For the reasons that follow,
Judge Hart's R&R still warrants our approval and adoption.

(b)   Savior does <u>not</u> object to Part II.B of Judge Hart's

R&R which addresses, on the merits, Savior's sole <u>habeas</u> <u>corpus</u>

claim: ineffective assistance of trial counsel;

(c)   The R&R recommends that Savior's petition should be

denied because the merits of his ineffective assistance of trial

counsel claim was adjudicated on the merits in the Superior Court

and that court's decision was neither "contrary to, or involved an

unreasonable application of, clearly established Federal law, as

determined by the Supreme Court of the United States" nor did it

"result[] in a decision that was based on an unreasonable

determination of the facts in light of the evidence presented in

the State court proceeding", <u>see</u> 28 U.S.C. § 2254(d); R&R 6-7;

(d)   Savior's objections and supplemental objections

ignore the Superior Court's and Judge Hart's merits-based

treatment of his ineffective assistance of counsel claim, <u>compare</u>

Objections ¶ 7, and Supplemental Objections ¶¶ 16 ("This Honorable

Court [must] recognize that the Superior Court did not address the

merits of the ineffectiveness of counsel (trial counsel claim) and

under <u>Martinez v. Ryan</u>, this Court should decide the

ineffectiveness claim made on the pitiful performance of trial

counsel"), <u>with</u> R&R 6-7 (rejecting on the merits Savior's

ineffective assistance of trial counsel claim and citing the

Superior Court of Pennsylvania's decision also rejecting this

claim on the merits), and Respondents Resp. Ex. J at 6 (March 30,

2011 Superior Court of Pennsylvania Memorandum) (holding that the

claim was procedurally defaulted but alternatively holding that

"[e]ven if the claim were not waived, it would be without merit");

(e)   Judge Hart thus offered independent and unobjected-

to grounds for denying Savior's habeas corpus petition that we

need not review de novo, see Local R. Civ. P. 72.1 IV(b) ("written

objections . . . shall specifically identify the portions of the

proposed findings, recommendations or report to which objection is

made and the basis for such objections");

(f)   After careful and independent review of unobjected-

to Parts I, II.B, and III (improperly labeled IV) of Judge Hart's

well-reasoned R&R, he properly examined all issues of fact and law

relevant to the disposition of Savior's petition; and

(g)   Consequently, we will approve and adopt Judge

Hart's recommendation that Savior's petition be denied on the

merits;

It is hereby ORDERED that:

1.   The Clerk of Court shall TRANSFER this case from

our Civil Suspense docket to our Active docket;

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2.   The Report and Recommendation (docket entry # 10) is APPROVED and ADOPTED except for Part II.A;

3.   Savior's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry # 3) is DENIED;

4.   Savior having failed to make a substantial showing of the denial of a constitutional right, we decline to issue a certificate of appealability; and

5.   The Clerk of Court shall CLOSE this case statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.

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